

840 CMR 10.00: STANDARD RULES FOR DISABILITY RETIREMENT

10.13: Decision

In all disability proceedings the decision of the retirement board shall be based exclusively on the record of the hearing or, if there is no hearing, on the record of the proceeding. A written decision shall be made as soon as administratively feasible and copies of the decision shall be sent to all parties as provided in 840 CMR 10.13.

(1) Proceedings for Disability Retirement. In proceedings for disability retirement the retirement board shall determine whether the member is eligible for disability retirement under M.G.L. c. 32, §§ 6 or 7, or under another section of general or special law, and under the standard set forth in 840 CMR 10.04. In no event shall the decision be later than 180 days after the application for disability retirement is filed unless an extension is granted by the Commission under M.G.L. c. 32, § 6(4) or § 7(6).

(a) Decision to Grant Application: Information to be Sent to Commission. If the retirement board decides to grant an application for disability retirement, a copy of the decision shall be sent to the Commission on the appropriate form together with a statement of the facts found by the retirement board and all of the documentary evidence in the record that may be of assistance to the Commission including, without limitation, the following:

1. The certificate(s) of the medical panel, including any and all correspondence from the medical panel;
2. The certificate of the applicant's physician;
3. All descriptions of the accident, if the application is for accidental disability;
4. All descriptions of the member's duties;
5. All documents prepared by the member in connection with the application;
6. All documents prepared by the employer in connection with the application;
7. All documents prepared by the retirement board in connection with the application.

(b) Decision to Deny Application. If the retirement board decides to deny an application for disability retirement the board shall notify the Commission and notice of the decision and right to appeal shall be sent to all parties as provided by 840 CMR 10.13(3).

(2) Decision to Restore a Member Who Was Retired for Disability to Active Service.

(a) If within two years of retirement a medical panel convened pursuant to M.G.L. c. 32, § 8 unanimously finds that the member is able to perform the essential duties of the position from which he or she retired or so finds following completion of a rehabilitation program the member shall be returned to such position if it is vacant or a similar job within the same department for which he or she is qualified and his or her disability retirement shall be revoked. If such position is not vacant, the last person appointed to that rank or position shall be reduced in rank or position to create a vacancy and the person who was reduced in rank or position shall be placed at the top of the list to fill such rank or position for a two year period. The retirement board shall notify the member, the employer and the State Human Resources Division of the panel's determination. A copy of this notification shall be sent to the Commission.

(b) If after two years from the date of retirement a medical panel unanimously determines that the disability retiree is qualified for and able to perform the essential duties of the position from which he or she retired or a similar position within the same department, as determined by the State Human Resources Division, the member shall be returned to said position, provided the position is vacant. If a vacancy exists, the member shall be restored to active service in the position from which he or she retired. If no vacancy exists, the member shall be granted a preference for the next available position or similar position for which he is so qualified. The retirement board shall notify the member, the employer and the State Human Resources Division of the panel's determination.

A copy of this notification shall be sent to the Commission.

(c) If a retiree is found able to return to his or her position as provided in 840 CMR 10.13(2)(b), and if no vacancy exists in the same or in a similar position, the retiree shall continue to receive his or her retirement allowance until reinstatement takes place or until the member's pension is reduced or revoked as a result of the submission of earnings information under M.G.L. c. 32, § 91A.

(d) If a member refuses to return to service or to file such information as the retirement board or the Commission shall require, the retirement board shall suspend his or her retirement allowance.

(e) If any member is restored to active service, his or her retirement allowance shall cease and the individual shall again become a member in service and regular deductions shall again be taken from regular compensation.

(f) Any creditable service in effect at the time of the member's retirement for disability shall thereupon be restored to full force and effect and, upon subsequent retirement, the member shall be entitled to a normal yearly allowance computed as though such disability retirement had not

10.13: continued

taken place. No additional contributions shall be required for receiving such creditable service.

The amount of creditable service to be granted for the period during which the member received a disability retirement allowance shall be based on the average amount of creditable service earned by the member for the 24 months immediately preceding the last day for which the member received regular compensation.

(g) The provisions of 840 CMR 10.13(2) shall not apply to any person who upon restoration to service would be classified in Group 3.

(3) Notice of Decision; Appeal.

(a) If the retirement board decides to deny an application for disability retirement, notice of the decision shall be sent to all parties within three days of the decision.

(b) A copy of M.G.L. c. 32, §§ 16(3) and (4) shall be included with the notice of decision and, upon request, the retirement board shall assist the applicant or retired member, as the case may be, in the filing of an appeal.